88-151

No. A-972

Supreme Court, U.S.
FILED
JUL 26 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

ANDREW C. MANZO, Petitioner

v

LORRAINE M. MANZO, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

ANDREW C. MANZO
755 Elmhurst Road
Severn, MD 21144
(310) 969-1786

Attorney in Fact

July 22, 1988

DUP PG #5 not pgs

52

QUESTIONS PRESENTED

1. Whether the procedure of the Maryland Circuit Court is violative of the Free Speech Clause of the First Amendment of the Constitution of the United States when applied to deny a citizen his right to present evidence and state facts which are germane to the issue before that court, especially as it pertains to the Court's rationale that it does not have the time to hear the merits of the issue and pertains to the court not wanting to be bothered adjudicating certain issues.

2. Whether the procedure of the Maryland Circuit Court is violative of the Due Process clause of the Fourteenth Amendment of the Constitution when applied to disregard a state law and violate that state law and deprive a citizen of property and also deny him equal protection of the laws.

3. Whether the actions, procedures and rationale of Maryland Circuit Court are violative of the Unusual Punishment clause of the Eighth Amendment of the Constitution of the United States as applied to denying a citizen equal protection under the law because he was married for 30 years and did not have a property settlement agreement.

4. Whether the actions, procedures and rationale of a Maryland Circuit Court of Special Appeals of Maryland are violative of the Deprivation of Property Clause, the Due Process Clause, and the Equal Protection Clause of the Fourteenth Amendment of the constitution of the United States when applied to disregarding the stipulations of a Federal Statute and depriving a citizen of those rights and property guaranteed to him by that Statute.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

ANDREW C. MANZO, Petitioner

v.

LORRAINE M. MANZO, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

The Petitioner Andrew C. Manzo respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Special Appeals of Maryland, entered in the above entitled proceeding on December 3, 1987.

OPINIONS BELOW

The opinion of the Court of Special Appeals of Maryland is not reported and is reprinted in the appendix hereto, p. 4a infra.

The judgment of Divorce of the Circuit Court for Anne Arundel County appears in the appendix hereto, p. 8a infra.

No. A-972

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

ANDREW C. MANZO
755 Elmhurst Road
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(310) 969-1786

July 22, 1988

Attorney in Fact

JURISDICTION

The judgment of the court of Special Appeals of Maryland, affirming the judgment of the Circuit Court was entered December 3, 1987. See Appendix p. 4a, infra. A petition for a Writ of Certiorari to the Court of Appeals of Maryland was filed and denied on March 8, 1988.

A supplemetary notice of appeal to this Court was timely filed in the Court of Appeals of Maryland on March 31, 1988.

This Petition for Writ of Certiorari. (30 day extension was granted by Justice Rhenquist on June 22, 1988). The Jurisdiction of this Court is invoked under 28 U.S.C. #1257 (3).

STATUTES AND RULES

1. The Constitution of the United States

   First Amendment
   Ninth Amendment
   Eighth Amendment
   Fourteenth Amendment

2. Public Law 97-252 (10 USC - $ 1408)

3. Maryland Marital Property Act

4. Annotated Code of Maryland:

   $3-6A-02

   $3-6A-03

   $3-6A-04

   $3-6A-05

   $3-6A-06

   $3-6A-08

HOW THE FEDERAL QUESTIONS ARE RAISED

At the earliest stage of the proceedings the petitioner raised the claims, in a letter to the presiding judge, (app. p. 6a), in a motion for a rehearing, and in his appeal to the Special Court of Appeals that the Judge's refusal to let the petitioner speak on his own behalf was unconstitutional as to the free speech provision of the First Amendment. Prior to the initial proceedings, Petitioner was informed by both attorneys that he did not want to hear from the Petitioner regarding property since the petitioner had been married for 30 years-during which time he should have been able to complete a property settlement agreement with his wife! Does this not violate the Eighth Amendment, cruel and unusual punishment, not even for a crime, but simply for having been married for 30 years? Also,

in not allowing the Petitioner Free Speech, he denied him Equal Protection and Due Process in violation of the Ninth and Fourteenth Amendments.

The Fourteenth Amendment claim was reiterated with respect to a rehearing with the same judge. Here the court indicated that he divides property his way, regardless of any laws indicating to the contrary - in this case the Maryland Marital Property Act. The Constitution of the United States does not allow a state to deprive a person of property without due process of law.

The Petitioner reiterated his claims to the Ninth and Fourteenth Amendments in the Court of Special Appeals and the Maryland Court of Appeals. The Court of Special Appeals refused to review P.L. 97-252 for legality, stating only that if the payment is illegal, the Federal Government will not make payment.

This again was a deprivation of Due Process since the Military pay centers do not review for legality, they only pay the amount that is stipulated. They do not adjudicate the legality of the payment.

STATEMENT OF THE CASE

The petitioner, Andrew C. Manzo, was married to the respondent, Lorraine M. Manzo in Los Angeles, California on April 1, 1955. In June 1956 she deserted her home and a new born child. After three weeks, he allowed her to return. Respondent again deserted in May, 1957. After a few weeks, he again allowed her to return to the home. She again deserted in 1960. Again, he listened to her pleadings and her promises, felt sorry for her and let her return to the family.

The fourth time that respondent deserted was December 20, 1971. This was 10 days before petitioner was to retire from the Air Force. This time, she returned to her home in Canada, attended college, attained degrees and commenced teaching school in Nova Scotia. During this period, petitioner attempted to obtain a divorce but whenever service was

attempted respondent hid from the server.

In 1975, Petitioner was raising his four children, 2 girls ages 13 and 15 and 2 boys, ages 18 and 19. The children introduced him to a woman, their Sunday school teacher. They were desirous of having her for a mother and she felt that way toward the children. In order to get married, the petitioner obtained a unilateral Haitian divorce.

In October 1976, Respondent came to Maryland and succeeded in having the Haitian divorce declared null and void. Petitioner was not desirous of living in sin in front of his four young children. He discussed this with them and severed the relationship with their 'new' mother.

In June 1977, Respondent contacted the Petitioner and begged for him to let her reconcile. She promised that she had changed, had grown up and would not hurt him or the children anymore. He allowed

her to return to the home.

In May 1982, Petitioner was in Williamsburg, Virginia attending his daughter's college graduation. When he returned home, everything of value was gone (approx. value: $40,000.00). She left a note saying that she had moved out and upon her lawyer's advice, had taken all items of value.

Above is a broad chronology, the relevant facts are summarized as follows:

Before the marriage, Petitioner advised Respondent that he desired children. She said that was all right as long as he agreed to be responsible for raising them. He agreed. However, each time that she became pregnant she attempted to abort. She succeeded once. After having the children, although he was doing most of the work in raising them, she continually badgered the Petitioner to adopt the children out.

Of course, he refused. Each time that she deserted, she said that she did not walk out on him, but the children because she could not stand them.

From April 1955 until August 1962, Petitioner was a civilian. In August 1962 he was recalled to active duty with the U.S. Air Force and was assigned to Travis AF Base, California. They immediately moved into quarters on the base. There was no hardship involved. In 1964, he was transferred to Misawa, Japan. The family joined him in three months and had quarters on the base.

During the period, the Petitioner's commander told him that it would be beneficial to his career if his wife would join the officers' wives club. Upon asking her she refused and nothing more was said. After that, he was passed over three times for promotion. Later she did join the wives club. When he

tried to thank her, she stated that she did not join for his benefit, but she joined in order to take a class in pattern making!

In 1967 the family was transferred to Fort Meade, Maryland. Again, they moved into government quarters on the post. In 1969, he was on orders for Viet Nam. Respondent told him that if he went, she would kill the kids and run away. Petitioner was given a humanitarian deferment from the assignment.

Petitioner was scheduled for retirement on 31 December, 1971. On December 20, when he returned from work, respondent was gone. She left no note. Later he found out that she went to Canada to her parent's home. When the children asked about her, he told them that she was not feeling well and had gone to Canada to be with her mother and

father. They did not seem to be disturbed about her leaving.

In 1974, Petitioner sought a divorce in order to marry his childrens' Sunday school teacher. His daughters especially said that they wanted a mother and they wished this woman to be their mother. He was unable to effect service and upon the advice of an attorney he obtained a Haitian divorce. He bought a new home in Severn, Maryland and moved in with his children and new wife.

In 1976 Respondent traveled to Maryland and succeeded in having the Haitian divorce invalidated. Petitioner then split with his former new wife because, as the trial judge put it, he was living in sin and he did not want any part of that because he was raising two young daughters.

In 1977, Respondent contacted the Petitioner and begged to come back into

the home. Again, he allowed her to return.

The last desertion was in May 1982.

Petitioner started divorce proceedings again in 1983. The first indications that he was going to be denied due process occurred on April 4, 1986 when we finally went to court.

Petitioner was approached in the hallway of the court house by both his attorney and that of the Respondent. He was told that the judge was in a hurry and did not have time to be involved in dividing up the property. (In the previous three years, attempts to meet with respondent for discussion proved fruitless). The judge, in chambers, had told the attorneys that the litigants had been married long enough and should, by this time have arrived at a property settlement agreement. If they did not agree on a settlement, he would just have

all the property brought into the house and sold at auction and the proceeds divided fifty percent to each.

There was no mention of the Maryland Marital Property Act which states that it is Maryland's policy to adjust the property interests of spouses fairly and equitably upon the dissolution of their marriage, and to give careful consideration to both monetary and non monetary contributions by the spouses to the well-being of the family. In this case, the court's refusal to recognize this law deprived the Petitioner of property without due process in violation of the Fourteenth Amendment and also denied him equal protection of the law.

Both attorneys continued to badger and coerce the Petitioner telling him that he better give her everything and anything that she wanted and fast, so that they could "get out of there"!

All through this hallway proceeding it was a matter of the lawyer for the respondent saying "we want this and that", and the other lawyer saying, "yeh, give them this and that because the judge is waiting and he is going to give them this and that anyway". In reality, everything that transpired was the absolute opposite of the letter of the Maryland Statutes. (Crawford v. Crawford, Md. 443 A.2d. 599, 1982).

As the result of personal research after the hearing, Petitioner questioned the legality of being deprived of his retired pay since the respondent had not served the required 10 years with him on active duty. In the rehearing, the court stated that the Federal Government would have to rectify that since it was a Federal Problem!

In the rehearing on September 10, 1986, the same court admitted that he had

his way of doing things, regardless of the fact that that way may not be in accordance with state statutes. The Petitioner was deprived of any part of his personal property that had already been taken from him and he was deprived, without due process of half of what little he had left, including his military retired pay, and his house which he had bought alone during the period when he had the Haitian divorce.

The case was argued in the Court of Special Appeals of Maryland on December 3, 1987. Judgment was affirmed.

Again in this instance there was no mention of the stipulations of the Maryland Marital Property Act, and no relief was offered. This court also declined to research further into the legality of the disposition of the military retired pay with respect to the Former Spouses Protection Act.

A petition for a writ of certiorari to the Court of Appeals of Maryland was denied on March 28, 1988.

REASONS FOR GRANTING THE WRIT

The Circuit Court's method of conducting the proceedings was in conflict with the Constitution of the United States which guarantees equality and fairness under the law for everyone. Previous cases which were in violation of the Maryland Marital Property act were subsequently reversed in Appeal. (Bender v. Bender 2828 Md. 525, 386 A.2d 772 (1978); Ward v. Ward 52 Md. App 336 449 A.2d 443 (1982), and Harper v. Harper 294, Md. 54, 448 A. 2d 916 (1982). There are undoubtedly many similar cases which are not or have not been filed with the Court of Appeals and such a disparity of judgments, in spite of the clarity of the Maryland Marital Property act deserve this Court's attention.

The Maryland Marital Property act is a good, fair, just law and in passing this law the Maryland legislature demands

equitable distribution of marital property upon the dissolution of a marriage (Crawford v. Crawford, Md. 443, A.2d, 599, (1982). This philosophy was substantiated and reiterated in Orr v. Orr (1979) US 268, 99 S Ct 1102, 59 L Ed 2d 306; Mazique v. Mazique 356 F.2d 801 123 US App D.C.; and Wallace v. U.S. 309 R. Supp. 748. Since equality under the law is guaranteed by the Fourteenth Amendment of the constitution of the United States, I believe that this case deserves this Court's attention.

Public Law 97-252, the Former Spouses' Protection Act allows the states to consider Military Retirement pay as marital property within certain guidelines and stipulations. The arbitrary disregard of these guidelines can spell problems for millions of retired servicemen and women. The granting of this Writ will give guidance

to the lower courts. One state court has recently decided that the statute can only be decided prospectively and not retroactively. (Arthur b. Arthur, Ind Ct App 2d Dist, No 49102-8610-CV-382, 2/18/88.

Laws are written to serve justice and if the laws are not followed in the courts then justice is not served. To deny the common man the blanket of the court is to deny him the guidance and protection which is guaranteed by the Constitution of the United States. It is not fair to arbitrarily discriminate as to which case will get the full time and attention of the court and which case will not. The full protection of the laws involving domestic cases are as important to that litigant as the criminal laws are to the person who deliberately breaks a law by committing a crime.

CONCLUSION

For the various reasons mentioned, this petition for certiorari should be granted. Petitioner has worked his way up the legal ladder and now he approaches his last opportunity for review and relief. If he is successful and correct in arguing that the Circuit Court arbitrarily denied him his Constitutional rights, the matter should be remanded to the Circuit Court for appropriate disposition.

Respectfully submitted

Andrew C. Manzo
755 Elmhurst Road
Severn, MD 21144
(310) 969-1786
Attorney in Fact

APPENDIX

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SUPREME COURT OF THE UNITED STATES

No. A-972

ANDREW C. MANZO,

Applicant,

v.

LORRAINE M. MANZO

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of the applicant,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 26, 1988.

s/ William H. Rehnquist
Chief Justice of the United States

Dated this 22nd day of June, 1988.

In the Court of Appeals of the

State of MARYLAND

ANDREW C. MANZO, Appelant

v. No. 595

LORRAINE M. MANZO, Appellee,

NOTICE OF APPEAL TO THE SUPREME COURT

OF THE UNITED STATES

Notice is hereby given that ANDREW C. MANZO, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Court of Appeals of the State of Maryland, denying a Writ of Certiorari, entered in this action on March 28, 1988.

This appeal is taken pursuant to 28 U.S.C. $1254 (2) and $1257 (1) and (2).

_____

Attorney in fact for Appellant

Andrew C. Manzo
755 Elmhurst Road
Severn, Maryland 21144
(310) 9696-1786

Proof of Service

I HEREBY CERTIFY that on this 31 day of March, 1988 a copy of the foregoing Notice of Appeal to the Supreme Court of the United States was mailed, postage prepaid, to Fred Howard Silverstein, Counsel for the Appellee, 835 Court Avenue, Ellicott City, Maryland 21043.

_____

Andrew C. Manzo
Attorney in Fact
755 Elmhurst Road
Severn, Maryland 21144

ANDREW C. MANZO

v.

LORRAINE M. MANZO

In the

Court of Appeals

of Maryland

Petition Docket No. 595

September Term, 187

(No. 535, September Term, 1987
Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari and the answer filed thereto, to the Court of Special Appeals/in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: March 28, 1988

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

NO. 535

September Term, 1987

ANDREW C. MANZO

v.

LORRAINE M. MANZO

Gilbert, C.J.
Karwacki
Wenner

JJ.

PER CURIAM

Filed: December 3, 1987

Andrew C. Manzo seeks to set aside the terms of a separation agreement which was entered on the record in open court in the Circuit Court for Anne Arundel County.

Following the decree incorporating the agreement, Manzo moved to Alter or Amend on the ground that he was acting under duress at the time he entered into the agreement. Judge Wolfe, who had heard the divorce case together with the agreement, ruled otherwise. This appeal ensued.

In this Court Manzo raised three issues, namely:

> "I. The trial court erred in refusing to set aside the separation agreement between the parties on the grounds of coercion and duress.

II. It was clearly erroneous for the court to order direct payment to appellee of a percentage of appellant's military pension.

III. The essential terms of the separation agreement were so vague and uncertain as to render the agreement unenforceable."

I.

A review of the record discloses that the trial judge heard the evidence relative to the alleged duress. He also had the advantage of recalling the appearance and demeanor of appellant when the parties entered into the open court property settlement agreement. A trial judge's fact finding, in a non-jury trial, may only be set aside if it is clearly erroneous. Md. Rule 1086.

From our vantage point we are unable to declare that Judge Wolfe's fact finding was clearly erroneous.

II.

Even if we assume arguendo that the circuit court erred in directing payment to the former Mrs. Manzo of a percentage of a military pension due Mr. Manzo, the assumption means naught to appellant. If the payment is illegal under federal law, the federal government will not make payment. Consequently, Manzo will not be harmed by an erroneous decree. On the other hand, if the appellee's position is right that the pension was properly divided, provided reserve time is counted, the decree will be correct. Moreover, if the decree is subsequently determined to be illegal, either party may petition the circuit court to strike the illegal portion of the decree. In any event, Mr. Manzo would still be bound

to pay personally the percentage he agreed in open court to pay.

III.

Neither the circuit court nor we believe that the property agreement, as dictated into the record of the trial, is "so vague and uncertain as to be unenforceable." We have read the record of the April 1986 hearing, and we believe the agreement dictated into the record and assented to by the parties is clear in its terms.

JUDGMENT AFFIRMED.

COST TO BE PAID BY APPELLANT.

State of Maryland

FIFTH JUDICIAL CIRCUIT

Anne Arundel County Courthouse

Annapolis

21401

June 24, 1986

Andrew C. Manzo

755 Elmhurst Road

Severn, Maryland 21144

RE: Manzo v. Manzo
Divorce No. 3206925

Dear Mr. Manzo:

I received your letter of June 23, 1986 in which you outlined as to how you were pressured to reaching an agreement in your divorce case. I have no knowledge of what took place between you and the attorneys and, in fact, do not have a clear recollection of what took place in court on April 4. If you wish to have the agreement set aside I suggest that you contact an attorney for advice

as to how you may proceed.

Because this is an adversary proceeding, I am not allowed to give you any advice.

Very truly yours,

Martin A. Wolff

NAW:ckb

cc: Court file

Andrew C. Manzo
755 Elmhurst Road
Severn, Maryland 21144
June 23, 1988

Circuit Court for Anne Arundel County
Court House
Annapolis, Maryland 21401

ATTN: The Honorable Martin A. Wolff

RE: Manzo v. Manzo
Divorce No. 3206925

Dear Judge Wolff:

My attorney, upon my querry, has informed me that it is within the realm of decorum for me to write a letter directly to you.

My case was heard on April 4, 1986, or, at least, part of the case was heard. Before the time for the hearing, my attorney, kenneth MacFadyen, accompanied by my wife's attorney, Fred Silverstein, approached me in the crowded hallway of the court house and pounced upon me and hurriedly told me that you refused to hear the case in regards to a property

settlement and you gave us a few minutes to arrive at a property settlement or else you were going to have Mrs. Manzo bring back every thing that she had removed from the house back to the house, put it in the middle of the living room, call in an auctioneer and have everything auctioned off and split the proceeds fifty-fifty. My attorney then kept telling me that I better give them everything that they want or else I will not get anything. Neither one of them gave me a chance to think. The way that they kept coming at me I was numb and dumbfounded. Any issues of my rights in my house or my military pension were cast aside and both of them kept pushing me to give Silverstein anything that he wanted and to this, MacFadyen agreed readily. He never argued anything that Silverstein asked for, or rather, told me to give to him. All the while, Mrs. Manzo was not seen.

In prior consultations with MacFadyen, he said that he was going to research all the laws because he thought that under the circumstances, those of my wife having a history of not helping me raise the children and then continually deserting and abandoning them and always refusing in anyway to be a good wife and a good mother, that I could get credit for all the payments and improvements which I had put into the house. Also that I could get half credit for the $40,000 worth of personal property which she had removed from the house.

I also kept asking him to look into the State and Federal law regarding my military retirement pay. We had less than 10years on active duty while married and because of her conduct as a wife and the intent of the law, I probably would not lose any of my pension because of her conduct. She walked out on the security

and did not deserve to be awarded any of it. As it is, she earns as much as I do and has less liabilities. Later, Mr. MacFadyen told me that he did not have time to research the laws and he took me into the hearing unprepared for the hearing and was evidently quite happy when you laid out your ultimatum.

Later, after consulting with other attorneys, I realized that I had been sold down the river. One of the worst matters was when I was expecting to be consulted regarding the judgment and I discovered that the other attorney had written it. MacFadyen told me that he had "sloughed off the work" onto Silverstein. Of course, it was not written in accordance with what had been decided. Primarily that since we had less than ten years on active duty, I would send the check. Secondly, that the correct percentage was closer to 17%, since my reserve time-

out of marriage - gave me 26 years for pay and according to page 1087 of the Family Law Reporter, benefits earned out of marriage are not good. These matters I mentioned to MacFadyen before he "sloughed off the work"!

Mr. MacFadyen for the last year has paid no attention to me or my case. I told him that I did not agree with anything and I was coerced into the so called agreement. He told me, in effect, to forget about it and lay down and die peacefully!

Mr. Silverstein had continually refused to bring Mrs. Manzo and me together to discuss a property settlement even though 90 percent of the property, including the house, was purchased at one time or another while Mrs. Manzo was in one of her 5 states of desertion and abandonment, so I never did get a day in court. I am sure that under all the laws

I am entitled to at least 50 percent of what I bought. She brought nothing into the home of material value and very little in the way of love or family harmony, (she always stated that she hated the children), but I stuck it out for many years and suffered because I believed in the sanctity of marriage. Now I am made to suffer two-fold.

All I ask is a little justice but everyone appears to want to deny me that also. It took me a while, after the shock of the numbness wore off to realize how I had been coerced and made under duress to agree to give away everything that I had worked so hard for for so many years with absolutely no help form my spouse. In fact, she deserted in 1971, five days before Christmas and ten days before I was to retire from the military, leaving me with four children ages 9 and 15. I struggled and raised them myself

and today they are all good successful citizens. One of my daughters just graduated from Law school at William and Mary and is working as an attorney in Richmond, Virginia.

I was foolish enough to let her talk me into letting her back into the household in 1977. (She promised that she had grown up and would be happy because the children were grown up). She deserted again in 1982 when all of a sudden she started hating all men and all people named Manzo! She even denies the existence of our granddaughter.

Your honor, I am not asking for anything that I do not deserve, only equality. I would like to have the so called agreement set aside, for Mrs. Manzo gave up nothing and I was made to give everything away-what little I had left.

I will appreciate some fairness and justice.

Respectfully yours,

Andrew C. Manzo

FRIEDMAN, GLORIOSA, COHEN & MACFADYEN, P.A.

Eighth Floor - INA Building

303 East Fayette Street

Baltimore, Maryland 21202

June 12, 1986

Circuit Court for Anne Arundel County

Court House

Annapolis, Maryland 21401

ATTN: The Honorable Martin A. Wolff

RE: Manzo v. Manzo
Divorce NO. 3206925

Dear Judge Wolff:

In supplement to a letter to the Clerk of the Court dated June 4, 11986 from Mr. Silverstein, my client has advised me that I may not sign the Order in the form proposed by Mr. Silverstein for two reasons. First, he believes he did not agree to having a portion of his Air Force check set forth in the agreement sent directly to Mr. Silvertein's client. Second, he believes

I have misadvised him with respect to his pension and has indicated to me that he has received advice from military advisors that there is a requirement of ten (10) years of marriage before military pension may be considered as marital property by the states.

At the moment, it appears I am still representing Mr. Manzo, and if an Order is signed in the form presented, I am instructed by Mr. Manzo to file a Petition for Reconsideration.

I shall wait to hear from you after your consideration of Mr. Silverstein's Order.

Very truly yours,

Kenneth J. MacFadyen

KJM/cab

ANDREW C. MANZO	IN THE
Plaintiff	CIRCUIT COURT
vs.	FOR
LORRAIN M. MANZO	ANNE ARUNDEL COUNTY
Defendant	DIVORCE #3206925

* *

JUDGMENT OF DIVORCE

This cause having been duly submitted to the Court on the 4th day of April, 1986, and testimony having been taken thereon,

It is thereupon, this 16 day of June, 1986, by the Ciruit Court for Anne Arundel County.

ORDERED that the said ANDREW C. MANZO, the above-named Plaintiff, be and he is granted a DIVORCE A VINCULO MATRIMONII from the Defendant, LORRAINE M. Manzo.

IT IS FURTHERED ORDERED that the Agreement set forth on the record in open court on the 4th day of April, 1986,

relative to alimony, property rights, Court costs, etc., be and the same is hereby approved and made a part thereof and incorporated in the Judgment, having the same force and effect as if fully set forth herein.

IT IS FURTHER ORDERED, that no right of alimony shall accrue onto either of the parties hereto, by virtue of their express waiver thereof.

IT IS FURTHER ORDERED that this is a qualified domestic relations order as defined in Article 10 Section 1408 of the United States code, as from time to time amended. In accordance therewith, the military retirement payment of retired or retained benefits, from the disposable retired or retainer pay of a former member of the armed serviced, the actual payment thereof coming from the Air Force Accounting and Finance Center RPT located in Denver, Colorado 80279 to

Andrew C. Manzo, social security #04418709, the participant in the retirement program who is presently living at 755 Elmhurst Road, Severn, Maryland 21144 is the retirement plan which is subject to this Order. The alternate payee is Lorraine M. Manzo who presently resides at 8073 Green Orchard Road, Apartment 22, Glen Burnie, Maryland 21061. The Defendant/Alternate payee's equitable interest in said retirement program is hereby declared to be 25.5% of the disposable retired or retainer pay, form the disposable retired or retainer pay of the Plaintiff. The Defendant, LORRAINE M. MANZO, shall receive 25.5% of the aforesaid retirement benefit payments made from the disposable retired or retainer pay to the participant, ANDREW C. MANZO, including any death benefits, if, as, and when, such payments are made. The Defendant presently being a retired

member of the armed services, any rights which might otherwise accrue under the Sailors' and Soldiers' Civil Relief Act of 1940 are inapplicable.

AND IT IS FURTHER ORDERED, that the Plaintiff and the Defendant shall equally bear the cost of these proceedings.

_____
JUDGE

APPROVED AS TO FORM:

_____
Kenneth J. MacFadyen, Esquire
Attoney for Plaintiff
Andrew C. Manzo

_____
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Lorraine M. Manzo

Supreme Court, U.S.
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AUG 23 1988
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 88-151

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

ANDREW C. MANZO, Petitioner

v.

LORRAINE M. MANZO, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE

COURT OF APPEALS OF MARYLAND

OPPOSITION BRIEF TO PETITION FOR WRIT OF CERTIORARI

Fred Howard Silverstein, Esquire
8355 Court Avenue
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Attorney for Respondent

August 22, 1988

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QUESTIONS PRESENTED

I.

Whether the Supreme Court of the United States has jurisdiction to issue a Writ of Certiorari where no state statute is claimed to be repugnant to the Constitution or no right is alleged to be claimed under the Constitution?

II.

Whether the Supreme Court of the United States has jurisdiction to issue a Writ of Certiorari where no Federal question or constitutional claim has been made or preserved in any state trial or appellate court?

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STATEMENT OF JURISDICTION

A Consent Judgment in a divorce action was entered in the Circuit Court for Anne Arundel County, Maryland on June 16, 1986. The Petitioner herein moved to alter or amend that judgment and, after a hearing, that motion was denied on September 10, 1986. An appeal from that decision was taken to the Court of Special Appeals of Maryland on October 7, 1986 and, on December 3, 1987, that Court affirmed the decision of the Circuit Court for Anne Arundel County. The Petitioner herein petitioned the Court of Appeals of Maryland for a Writ of Certiorari on or about January 19, 1988. That petition was denied on March 28, 1988

after an application for extension of time was filed by and granted to the Petitioner.

The Petitioner merely asserts jurisdiction of this Court under 28 U.S.C. Section 1257(3) as well as the First, Fifth, Eighth and Fourteenth Amendments to the United States Constitution. As the following facts indicate, no Federal question has ever been raised or presented in this matter.

The Petitioner and Respondent were married on April 1, 1955 and four (4) children were born to the parties as a result of the marriage, all of whom are emancipated. During the course of the marriage, the Petitioner served nine (9) years and three (3) months on active duty in the military and six

(6) years in active reserve service.

On August 3, 1983, the Petitioner filed a Complaint for Divorce in the Circuit Court for Anne Arundel County, Maryland. The Respondent filed an Answer to the Complaint and a Cross Complaint. During the pendency of the case between the years 1983 and 1986, there was extensive discovery and proposals of settlement. Trial on the merits was scheduled on April 4, 1986. All of the Respondent's witnesses were present for trial at that time. The parties had been in Court on an earlier date when this case had been set prior to April 4, 1986, and no judge had been assigned to the case. Therefore, the case was not reached. During counsels' chambers meeting with the trial judge,

the Court advised counsel for the Petitioner and Respondent that it was ready to proceed with the case. At this meeting, the Court inquired as to whether this case would be tried or if the parties had reached an agreement. When counsel for Petitioner inquired as to whether the Court would divide the property between the parties, the Court indicated that it could not divide the property and, if the parties could not agree, the usual procedure was to order the property sold and to divide the proceeds between the parties.

At no time during any discussions in chambers with the trial judge did that Court indicate that the parties should have had an agreement concerning the property and that it

would "punish" the parties for not having one. Although the Petitioner testified during the hearing on the Motion to Alter or Amend Judgment that his counsel had informed him that the parties should have had an agreement prior to trial, this testimony was entirely self-serving and baseless.

After the discussion in chambers, Petitioner's counsel requested a few moments to speak with his client and left the trial judge's chambers. Counsel for Respondent never approached the Petitioner nor did he negotiate a Property Settlement Agreement in front of the Petitioner, except when Petitioner insisted on standing next to his counsel during negotiations on the issue of retirement benefit percentages to be

received by Respondent. The only other issue discussed in the hall consisted of the disposition of furniture and monies that the Petitioner had put into the marital home. All other aspects of any property settlement were discussed by counsel prior to the scheduled Court date.

The parties entered the courtroom and the Consent Judgment was entered on the record before the trial judge. During this hearing, the Court stated to the parties "I'm going to have counsel go over point by point of what they believe to be the agreement between the husband and the wife, and I'm going to ask each of you 'Is that your agreement?' and I'm going to ask for an affirmative or, if it's not

true, a negative response that will bind you. In other words, you will be bound by those terms because this is all being recorded." The Court then proceeded to have counsel for the Respondent state on the record what the agreement was between the parties. After each point, the Court would ask the parties "Is that correct? That is your agreement?" The Court then awaited a response. During the course of the statement of settlement, Mr. Manzo agreed to all points and even took the opportunity to consult with his lawyer concerning one aspect of the pension agreement.

Counsel for Respondent stated as part of the settlement on the record, that the retirement benefits were to be divided in a certain manner. The

Court then stated that it was its "understanding . . . if the Decree is properly worded and forwarded to the paymaster . . . that they would cut a separate check and send it to the Wife. That's my understanding so that he would not have to make a division and mail it to her." Petitioner then raised an issue of the taxability of the pension benefits. Although no testimony was elicited regarding the number of years of creditable service the Petitioner had earned during the marriage of the parties, no objection or question was raised by the Petitioner at that time.

The Petitioner filed a Motion to Alter or Amend Judgment, and a hearing was held on that Motion before the same trial judge who had placed the

settlement on the record. At that time, the Petitioner gave self-serving testimony concerning the out-of-Court negotiation of the Consent Agreement and his state of mind during the presentation of the agreement in open Court. The Petitioner produced a lay witness who offered the opinion that Petitioner did not understand what had transpired at the hearing on the merits.

The Motion to Alter or Amend the Consent Judgment was brought by Petitioner on the grounds that he did not agree with the direct payment of any pension benefits to his wife and that he was coerced into the Consent Agreement. The Court addressed both of the issues raised in its summation. The Court stated that it

did "not have to advise everyone of their marital rights when they are represented by counsel. That's what one pays counsel to do." The Court further stated that if the Petitioner's counsel did not advise him of his rights, "then you have a legitimate complaint against that attorney." The Court recalled its conference with counsel in chambers just prior to the scheduled trial on the merits and stated that "I said - as a matter of practice I don't divide up, you know, who gets the red chair and who gets the blue chair of the jointly owned property. I said . . . 'if they can't agree on the jointly owned property, it is generally my practice to have it all sold at an auction and divide up the money

because I can divide dollars. I can't divide chairs specifically.'" The Court further stated in its summation that his "practice is to try and ascertain whether or not there's been an agreement made and everyone understands exactly what is going on." The Court further noted that the Petitioner seemed to appear "the same as he was when he was in Court. He did not appear to me to be nervous, to be shaking, or to be upset. He appeared to have complete control of himself then as he does now." The Court, therefore, denied the Motion to Alter or Amend the Judgment.

On appeal to the Court of Special Appeals of Maryland, the Petitioner raised the issues of coercion and the trial court's inability to order

direct payments of a portion of the military retirement of the Petitioner. He also added an issue as to the certainty of the terms of the agreement. All of these arguments were rejected by the Court of Special Appeals.

No federal or constitutional questions were raised in Petitioner's Petition for Writ of Certiorari in the Court of Appeals.

ARGUMENT

The Petitioner's Petition for Writ of Certiorari purports to present four (4) rather incomprehensible "questions" for this Court's consideration. Although seemingly couched in constitutional terms and raised under 28 U.S.C. Section 1257(3), no State statute or any law of the United States, is claimed to be repugnant to the Constitution, nor is any right alleged to be claimed under the Constitution in this case. In short, this Court is without jurisdiction to issue a Writ of Certiorari to the Court of Appeals of Maryland.

As presented above, this case was a settlement of a divorce action in a State Trial Court. The Petitioner,

unsatisfied with the monetary terms of this Consent Judgment, (although satisfied with the divorce which was granted to him), discharged his attorney, hired new counsel and attempted to set the judgment aside based on an alleged coercion and error by the trial court in ordering direct payments of a portion of a military pension to the Respondent. This attempt to revise the trial court's judgment failed.

On appeal to the Court of Special Appeals, Maryland's intermediate Appellate Court, three (3) issues were raised. None of these issues presented a Federal question. These issues concerned alleged error of the trial court in failing to set aside the Consent Judgment on the grounds of

duress, alleged error in ordering direct payments of a percentage of Petitioner's retirement benefits, and whether the consent agreement contained unenforceable terms based on alleged vagueness.

The Petitioner discharged counsel again and pro se filed a Petition for Writ of Certiorari in the Court of Appeals, Maryland's highest Court. This Petition presented seven (7) disjointed "questions", none of which raised a Federal question. This Petition was denied.

It is axiomatic that any Federal question must be raised, preserved or passed upon in the State Court as a condition precedent to review by the Supreme Court. Cardinale v. Louisana, 394 U.S. 437 (1969). In

addition, any Federal or Constitutional question must be raised with clarity in the State Court before review is appropriate. Socialist Labor Party v. Gilligan, 406 U.S. 583 (1972). No federal or constitutional issues were raised in the trial court, Mutual Life Insurance Company v. McGrew, 188 U.S. 291 (1903), nor in the Appellate Courts of Maryland. Hiawassee River Power Company v. Caroline-Tennessee Power Company, 252 U.S. 341 (1920).

The Petitioner improperly pleads the existence of a federal claim by mere assertion, Millingar v. Hartupee, 73 U.S. 258 (1868), and improperly raises such issues for the first time in the Supreme Court. Monks v.

New Jersey, 398 U.S. 71 (1970); Cardinale v. Louisana, 394 U.S. 437 (1969); Rogers v. Clark Iron Company, 217 U.S. 589 (1910).

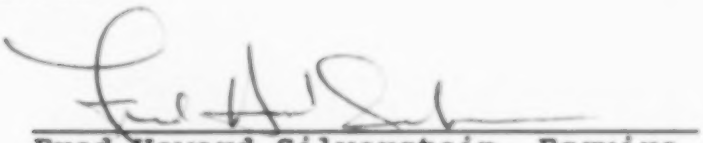
Moreover, even if it could remotely be considered that a federal question or constitutional issue was raised in the Courts below any such issues are not necessary to the determination of the case below, Adams v. Russell, 229 U.S> 353 (1913), nor are these "issues" substantial to the case. Wick v. Chelan Electric Company, 280 U.S. 108 (1929). The decision of the Courts below clearly and squarely rest upon state grounds and, therefore, this Court is without jurisdiction to review those judgments.

Radio Station WOW, Inc., v. Johnson,

326 U.S. 120 (1945).

CONCLUSION

For the reasons above stated, the Petition for Writ of Certiorari should be denied.



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CERTIFICATE UNDER RULE 28

I HEREBY CERTIFY that on this 23 day of August, 1988, three (3) copies of this Opposition Brief were mailed, postage prepaid, first class mail, to Andrew C. Manzo, 755 Elmhurst Road, Severn, Maryland 21144.